death of the plaintiff was merely a mistake as to the person entitled to the fund. This raises no question of jurisdiction. It is the duty of a court of probate to decide who on the facts are the proper distributees. See *Loring* v. *Steineman*, 1 Metc. (Mass.) 204, 209. A decree of payment or distribution made by a probate court which has jurisdiction will protect an executor or administrator if he makes payment in good faith in accordance therewith. *Ernst* v. *Freeman*, 129 Mich. 271, 88 N. W. 636; *Lowry* v. *McMillan*, 35 Miss. 147. This protection is accorded him, even if the decree be subsequently reversed. *Cleaveland* v. *Draper*, 194 Mass. 118, 80 N. E. 227; *Charlton's Appeal*, 88 Pa. St. 476; *Johnson* v. *Clem*, 5 Ky. L. R. 793. The reason is that the court protects those who in accordance with a legal duty act in obedience to a valid decree. The bank in the principal case has a statutory duty to pay according to the decree of the probate court. MASS. REV. LAWS, c. 150, § 23. Accordingly, it should be protected in making the payment.

LIENS — ATTORNEY — LIEN ON DOCUMENT ENFORCED OUT OF FUND REALIZED THEREBY. — A solicitor held, under his general lien, papers of a company which had been his client. During proceedings to wind up the company, the solicitor, pursuant to an order expressly reserving his lien, surrendered into court a document reciting an agreement to lease mining rights to the client. The liquidator contracted to sell the mining rights. Upon the purchaser's default, a sum of money deposited with the liquidator became forfeited. The latter applies for an order allowing him to retain the fund. The solicitor claims priority for his lien. *Held*, that the fund is to be applied first to the satisfaction of the solicitor's lien. *In re The Ardtully Copper Mines, Ltd.*, 50 Ir. L. T. R. 95.

Voluntary surrender to the bailor ordinarily dissolves a lien. *Vinal* v. *Spofford*, 139 Mass. 126, 29 N. E. 288. Therefore where an attorney has acquired a lien on papers prior to winding-up proceedings, an order for surrender to the liquidator will not be sustained. *In re Rapid Transit Co.*, [1909] 1 Ch. 96. *Cf. In re Wilson*, 12 Fed. 235, 244. But if the delivery is for a temporary purpose only, with the lien reserved, it is not dissolved. *De Witt* v. *Prescott*, 51 Mich. 298, 16 N. W. 656. *Cf. Blunden* v. *Desart*, 2 Dr. & War. 405, 419. *Contra*, *McFarland* v. *Wheeler*, 26 Wend. (N. Y.) 467. *Cf. Gregory* v. *Morris*, 96 U. S. 619. Especially must this be so in the principal case, for the court ought surely to keep faith with its own order. *Cf. Greenfield* v. *Mayor*, 28 Hun (N. Y.) 320. The documents in the main case were of assistance in obtaining the forfeiture. It would therefore seem that the lien preserved on the document in court should be extended to the forfeiture money. *Cf. Boynton* v. *Braley*, 54 Vt. 92, 93, with *Blunden* v. *Desart*, 2 Dr. & War. 405, 424. For offspring and accessions to chattels are subject to the same bailee's and pledgee's rights as the chattels. See *Kellogg* v. *Lovely*, 46 Mich. 131, 133, 8 N. W. 699, 700. *Cf. Putnam* v. *Cushing*, 10 Gray (Mass.) 334. See 2 KENT, COMMENTARIES, 14 ed., 361. *Cf. Cory* v. *Harte*, 13 Daly (N. Y.) 147. Again, money collected by an attorney's efforts is subject to his charging lien. *In re Wilson*, 12 Fed. 235, 238. And courts have held, apparently on this analogy, that money realized by the delivery of essential papers might be subjected to the same lien. *Aycinena* v. *Peries*, 6 Watts & S. (Pa.) 243. See *In re Wilson*, 12 Fed. 235, 244. An objection to the application of such analogy is the fact that a charging lien is specific rather than general.

NATIONAL GUARD — THE STATUS OF THE STATE MILITIA UNDER THE HAY BILL. — The appellee, Emerson, a member of the Massachusetts militia, was called into the service of the United States to aid in repelling the incursions of Mexican bandits. He refused to take the oath required by the recent Hay Bill, and claimed to be discharged of all federal obligations, on the theory that so much of the Dick Act, under which he had enlisted, as provided for

federal service for militia had been impliedly repealed by the Hay Bill. He was seized by United States officers, and, thereupon, succeeded in having a writ of *habeas corpus* issued. *Held*, that he be returned to custody. *Sweester* v. *Emerson*, U. S. Circ. Ct. of Appeals (1st Circ.) (not yet reported).

For a discussion of the principles involved in this case, see NOTES, p. 176.

SPECIFIC PERFORMANCE OF CONTRACT TO DEVISE — STATUTE OF FRAUDS — BREACH BY PROMISEE — INJUNCTION AGAINST PROBATE OF INCONSISTENT WILL. — In compliance with the terms of an oral agreement entered into between a son and father, by which the father promised to devise his homestead to the son in return for the son's engagement to live with and support the father and mother during their lives, the son entered and made improvements on the land, and the father executed and delivered to the son a will in his favor. After fifteen years of performance, the son died. Both his wife and executor offered to complete the contract, but the father refused and went to live with the defendants, to whom he subsequently devised the homestead. The plaintiffs, the heirs-at-law of the son, bring this action to enjoin the probate of the second will, and to declare a trust in their favor of the homestead in fee, subject only to the surviving widow's life estate. *Held*, that the injunction issue and the trust be declared. *Torgerson* v. *Hauge*, 159 N. W. 6 (N. D.).

It is well established that valid contracts to devise realty in consideration of personal services will be specifically enforced against the heir or devisee where the promisee has fully performed. *Parsell* v. *Stryker*, 41 N. Y. 480; *Howe* v. *Watson*, 179 Mass. 30, 60 N. E. 415. See *Johnson* v. *Hubbell*, 10 N. J. Eq. 332, 335. And it has been held, as in the principal case, that the execution and delivery of a will in pursuance of the parol contract satisfies the Statute of Frauds. *Naylor* v. *Shelton*, 102 Ark. 30, 143 S. W. 117; *Brinkner* v. *Brinkner*, 7 Pa. 53, 55. Whatever the merits of this notion, the contract in the principal case may on one theory be "taken out of the Statute" upon the basis of making lasting improvements where taking of possession was impossible, the part performance being of such a nature that the court cannot restore the promisee to his former position or adequately compensate him in damages. *Sutton* v. *Hayden*, 62 Mo. 101; *Best* v. *Grolapp*, 69 Neb. 811, 96 N. W. 641. But *cf.* *Barnes* v. *Teague*, 1 Jones Eq. (N. C.) 277, 279; *Burns* v. *Daggett*, 141 Mass. 368, 6 N. E. 727; *Butcher* v. *Stapely*, 1 Vernon 363; *Frame* v. *Dawson*, 14 Vesey 386. But the plaintiff, the promisee, is not entitled to specific enforcement unless his promise has been fully performed, for the court is powerless, and at all stages of the agreement has been powerless, to insure enjoyment in specie to the promisor. *Jones* v. *How*, 9 C. B. 1; *Newman* v. *French*, 138 Iowa 482, 116 N. W. 468; *Bourget* v. *Monroe*, 58 Mich. 563, 25 N. W. 514. *Cf.*, however, *Bartley* v. *Greenleaf*, 112 Iowa 82, 83 N. W. 824; *Prater* v. *Prater*, 94 S. C. 267, 77 S. E. 936. Nor is this altered by the offers to perform by the widow and the executor; the personal nature of the obligation allows the substitution to be refused without prejudice to the promisor. *Blakely* v. *Sousa*, 197 Pa. 305, 47 Atl. 286; *Schultz* v. *Johnson's Adm'r*, 5 B. Mon. (Ky.) 497. See WALD'S POLLOCK ON CONTRACTS, 3 ed., 543, note. The denial of specific performance, however, does not leave the children of the son without remedy. The value of their father's services may be recovered in *quantum meruit*. *Wolfe* v. *Howes*, 20 N. Y. 197; *Green* v. *Gilbert*, 21 Wis. 395. See KEENER, QUASI-CONTRACTS, 244. The value of the improvements may likewise be recovered. *Smith* v. *Adm'rs of Smith*, 28 N. J. L. 208. Further, the principal case asserts the jurisdiction of equity to enjoin probate of a will made in violation of a contract to devise. Since probate merely establishes the fact of the will, theoretically the injunction should not issue. *Sumner* v. *Crane*, 155 Mass. 483, 29 N. E. 1151; *Allen* v. *Bromberg*, 147 Ala. 317, 41 So. 771. In the principal case, however, the practical advantage of completely disposing of the cause in one action justifies the intervention.